

# **DEFAULT JUDGMENT PROCEDURES**

Adopted by the Montgomery County Commission on  
Common Ownership Communities

Adopted: February 7, 2007

## **A. Purpose**

The Commission on Common Ownership Communities (“CCOC” or “Commission”) has determined that a need exists to provide the public with an orderly, efficient, and consistently applied procedure to resolve formal complaints in proceedings where the respondent has failed to file a responsive pleading as provided by the Commission’s regulations or procedures. Neither a Complainant, hearing panel members, nor the Commission should be required to schedule, prepare for, and pay expenses associated with a hearing if a respondent has failed to appear and file an answer as required by the Commission. The procedures adopted herein provide for the entry of a default judgment against a respondent who fails to respond to a lawfully served complaint.

## **B. Authority**

(1) This Default Judgment Procedure is authorized by Montgomery County Code, Sec. 10B-6(a), which authorizes the Commission to “adopt rules and procedures as necessary to carry out the purposes of this Chapter [10B].”

(2) This Procedure is also authorized by COMCOR 10B.06.01.03 (b) (1), which requires: “Within thirty (30) days of service, the Respondent *must* file a Response to the Complaint with the Staff, and serve a copy on the Complainant” (emphasis added). COMCOR 10B.06.01.03 (b)(2) further provides: “If the Staff does not receive the Response, the Commission may grant the relief requested by the Complaint or take such other action provided herein.” The rules governing the CCOC, therefore, acknowledge the situation where a respondent fails to appear in a case. This Procedure will provide for the reasonable and efficient resolution of a complaint as a result of the nonappearance of one of the parties or for the failure to answer a complaint.

(3) Maryland Rules of Civil Procedure, Rule 2-613, provides the procedure for the entry of a default judgment in a civil case in Maryland courts. This Commission Procedure is consistent with this state court rule and includes the due process considerations contained in Rule 2-613.

### **C. Procedure for Default Judgment**

- (1) *Parties to whom applicable* - In this Guideline, the term “Complainant” includes counter-complainants and cross-complainants, and the term “Respondent” includes counter-respondents and cross-respondents.
- (2) *Order of Default* - If the time for pleading has expired pursuant to COMCOR 10B.06.01.03 (b) (1), and a Respondent has failed to plead as required, the staff shall notify the Complainant in writing of its right to request relief under these procedures, and shall enclose a form for the Complainant's use and a copy of these procedures. The staff shall mail a copy of this letter and of these procedures to the Respondent. If the Complainant files a request for an order of default, the staff shall refer the dispute to the Commission at its next available monthly meeting for a decision on whether to accept jurisdiction of the dispute. If the Commission accepts jurisdiction, the Commission or the hearing panel chair may enter an order of default. The request shall state the last known address of the Respondent. Commission staff shall prepare a form for the use of Complainants to submit such a default request.
- (3) *Notice of Entry of Default* - Promptly upon entry of an order of default, Commission staff shall issue a notice informing all parties to the dispute that the order of default has been entered, that the Respondent may move to vacate the order within thirty (30) days after its entry, and that the Complainant may move for a default judgment pursuant to Section 6 of these procedures. The notice shall be mailed to the Complainant, and also to the Respondent at the address stated in the request and to the Respondent's attorney of record, if any. The hearing panel chair may provide for additional notice to the Respondent in unusual circumstances as determined by the hearing panel chair.
- (4) *Motion by Respondent* - The Respondent may move to vacate the order of default within thirty (30) days after its entry. The motion shall state the reasons for the failure to plead and the legal and factual basis or the defense to the claim.
- (5) *Disposition of Motion* - If the hearing panel finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, the hearing panel shall vacate the order of default.
- (6) *Entry of Judgment* – If a motion is not filed under section (4) of this Procedure or was filed and denied, the hearing panel, upon request, may enter a judgment of default that includes a determination as to liability and all relief sought if it is satisfied: (1) that it has jurisdiction to enter the judgment and (2) that the notice required by section (3) of this Procedure was mailed. If, in order to enable the hearing panel to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the hearing panel may rely on affidavits, or conduct hearings. Commission staff shall prepare and make available to Complainants a form to request entry of a default judgment under this section.

- (7) *Finality* - A default judgment entered in compliance with this Procedure is binding on the parties, subject to judicial review under Montgomery County Code Section 2A-11.